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## Police Science Legal Abstracts and Notes

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## POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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**Validity of Confession Obtained During Period of Delay in Arraignment of Federal Prisoners**—In *Garner v. United States*, a District of Columbia case decided March 28, 1949 by the Court of Appeals for the District of Columbia, an effort was made by counsel for the defense to further extend the *McNabb-Upshaw* restriction on the admissibility of confessions obtained during a delay in taking arrested persons before federal commissioners for preliminary hearings.

The *McNabb-Upshaw* rule prohibits the use of any confessions, however voluntary they may be, if they are obtained during a period of *unnecessary* delay in arraignment. In the recent *Garner* case the defendants were arrested at night, after the federal commissioner's office was closed, and the confessions were made by each defendant within a few hours after arrest. The next morning they were duly arraigned. The Court of Appeals by a 2 to 1 decision rejected the defense contention that the *Garner* confessions were invalid because of the delay in arraignment. The majority of the court was of the opinion that Rule 5 (a) of the Federal Rules of Criminal Procedure only prescribed arraignment of arrested persons "without unnecessary delay," and that to accept the defense contention would completely ignore the word "unnecessary," since the commissioner's office was closed at the time of arrest. "It is still the law," said the majority of the court, "that necessary delay between arrest and presentation to a magistrate does not make inadmissible disclosures to the police during that delay." The court was even of the opinion that "in this case the periods of delay between arrests and confessions were so short as not to have been *prima facie* illegal, even if the arrests had been made during daylight hours."

The dissenting judge took the position that even though the commissioner's office was closed, the police should have attempted to locate a committing magistrate. He expressed his basic reason when he said, "Unless at least one magistrate is always available, secret interrogation cannot be prevented."

For a discussion of the *McNabb-Upshaw* doctrine see Volume 39, Number 5, of this *Journal* at p. 693. A detailed consideration of the problem presented in this case (which is as yet unreported officially), appears in Inbau, "The Confession Dilemma in the United States Supreme Court" (1948) 43 *Illinois Law Review* 442, obtainable from Northwestern University School of Law, Chicago, at a cost of \$1.25.

**Admissibility of Experimental Photographs to Prove Impossibility of Defendant's Testimony**—In the recent case of *Commonwealth v. Halleron*, (Pa., 1949) 63 A. (2d) 140, the defendant was charged with blackmailing a widow by accepting \$7,500 in exchange for his alleged efforts in obtaining and destroying the negative of a picture which supposedly showed the widow's late husband in a car in a compromising position with his secretary. The defendant contended that he was an innocent go-between, that he merely conveyed the money to a third person in exchange for the negative, which he destroyed. In order to prove

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that his representations to the widow were fictitious, the state introduced a professional photographer who testified that the defendant's testimony regarding what the picture showed—namely, the position of the parties in a parked car, the door of the car closed, and grass visible in the foreground of the picture—described a photographic impossibility. To prove this contention, the photographer produced certain posed photographs. The admission of this evidence, along with the instruction that it was to be used for impeachment purposes only, was upheld by the Superior Court of Pennsylvania.

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**Use of Photographs to Show Condition of Persons after Crime**—Three recent decisions in widely-separated jurisdictions show the ever-increasing use of photographs to evidence the condition of persons subsequent to an alleged crime. The first involved a situation where the defendant alleged that police officers struck him over the head when they entered his motel room looking for narcotics. After the defendant's further testimony that the blows caused a large gash over his eye, the prosecution introduced a photograph taken of him shortly after his arrest which contained no evidence of a cut or wound. The California Court of Appeals, in affirming a conviction of unlawful possession of a narcotic, upheld the introduction of this evidence. *People v. Harmon* (Cal., 1948) 200 P. (2d) 32.

In the second case four defendants were charged with rape. The issue was whether or not the prosecutrix consented. Photographs of the prosecutrix and of one defendant, taken two days after the date of the alleged crime, were introduced to corroborate prosecutrix's testimony that a terrific struggle took place and that she resisted to the extent of her ability. The Colorado Supreme Court affirmed the conviction. It specifically overruled any contention that the photographs should have been excluded because of their enlargement, their tendency to excite the passions of the jury, or the time lapse. *Mayner et al. v. People* (Colo., 1948) 200 P. (2d) 915.

In the third case the defendant appealed from a conviction of manslaughter. The basis for his appeal was the contention that photographs of the deceased, who had been stabbed seven times, were prejudicial in that they aroused the passions of the jury. The force of the defendant's contention that he was defending himself was undoubtedly lessened to a great extent by a photograph of the deceased showing seven wounds from a hunting knife. The Florida Supreme Court affirmed the conviction. *Savage v. State* (Fla., 1948) 38 So. (2d) 47.